

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1412

Cir. Ct. No. 2013FA221

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

REBECCA ANN PETTIT,

PETITIONER-APPELLANT,

V.

JOHN MICHAEL HEIN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Columbia County:
W. ANDREW VOIGT, Judge. *Affirmed.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Rebecca Ann Pettit appeals the circuit court's ruling, as part of the judgment of divorce, that Pettit is required to reimburse John

Michael Hein in the amount of \$111,500, according to the terms of their Marital Property Agreement (MPA). The sole issue on appeal is whether the MPA requires Pettit to reimburse Hein for payments he made to her creditors out of his individual property. For the reasons we explain below, we conclude that Pettit is required to reimburse Hein, and therefore we affirm.

BACKGROUND

¶2 Rebecca Pettit and John Hein were married in May 2009. Shortly before they were married, Pettit and Hein entered into a MPA that became effective on the date of their marriage. At the time that the MPA was created, Pettit owned her primary residence in Milwaukee and her family home in Columbus. Farmers and Merchant’s Bank (F&M) held a promissory note on the Columbus home.

¶3 Hein testified that the day before they were married, he paid \$100,000 to F&M on Pettit’s loan on her Columbus home, and during the marriage he made two checks out to Pettit totaling \$11,500, which Pettit then used to pay for property taxes she owed on her Milwaukee home and to completely satisfy the F&M loan (“the subject payments”).

¶4 Pettit filed a petition for divorce against Hein and a trial was subsequently held to the circuit court. The sole issue at trial was whether Pettit is required by the MPA to reimburse Hein for the subject payments.

¶5 In a written decision, the circuit court found that the subject payments were not a gift and based on this finding concluded that Pettit must reimburse Hein for the subject payments. The court ordered Pettit to reimburse Hein in the amount of \$111,500 by June 30, 2015. The parties stipulated to stay

collection and enforcement of the funds, and the court entered an order accordingly. Pettit appeals.

STANDARD OF REVIEW

¶6 This case involves the interpretation of a marital property agreement. A marital property agreement is a contract and is analyzed applying the rules of contract interpretation. *Steinmann v. Steinmann*, 2008 WI 43, ¶21, 309 Wis. 2d 29, 749 N.W.2d 145. The interpretation of a contract is a question of law, subject to de novo review. *Id.* “The primary goal in contract interpretation is to give effect to the parties’ intentions.” *Seitzinger v. Community Health Network*, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426. “We ascertain the parties’ intentions by looking to the language of the contract itself.” *Id.*

DISCUSSION

¶7 Pettit and Hein agree that the MPA is valid and enforceable, and Hein does not dispute that he voluntarily made the subject payments. In addition, Pettit does not challenge the circuit court’s factual finding that the subject payments were not made with donative intent. That is, Pettit does not challenge the court’s finding that Hein did not gift the subject payments to Pettit. And, our review of the trial transcript reveals that there are sufficient facts to support the court’s finding that Hein did not have donative intent. Thus, what remains is the proper interpretation of section III.B. of the MPA, and its application to the undisputed facts of this case.

¶8 We begin with the language of section III.B., which provides:

All other obligations, including but not limited to contractual obligations ... that either party has incurred or hereafter incurs ... shall be the obligations of the incurring

party as though he or she were an unmarried person, regardless of when such obligation is incurred. Unless prohibited by law, any such obligation shall be satisfied exclusively out of the individual property of the incurring party as defined by this agreement. *If a creditor obtains payment or satisfaction in connection with the obligation of a party out of the individual property of the other party as defined by this agreement, the other party shall be entitled to full reimbursement from the incurring party or his or her estate.* [Emphasis added.]

The emphasized sentence is what we refer to as the “reimbursement provision,” which is at the core of this dispute. Therefore, our task is to interpret section III.B. so as to give effect to the parties’ intentions in drafting it.

¶9 On appeal, Pettit states what she believes is the purpose of section III.B., which is to make clear “that all individual obligations of the spouses are separate and the individual assets of the other party cannot be used to satisfy the obligations of the other.” Pettit’s statement of purpose is not entirely consistent with the plain language of section III.B. If Pettit is saying that a spouse cannot pay the debts of the other spouse, this is plainly not true. The parties’ intent in including section III.B. in the MPA is found in the plain language of the section. Plainly stated, the purpose of section III.B. is to ensure that the parties will fulfill their financial obligations under the MPA while maintaining the individual character of each party’s property. By its plain terms, the reimbursement provision makes clear that when one spouse pays a creditor of the other spouse with his or her individual assets, the paying spouse is entitled to reimbursement from the incurring spouse. In short, this provision maintains a clean line between each party’s individual property when one spouse pays a financial obligation on behalf of the other spouse, by requiring the debtor spouse to reimburse the paying spouse.

¶10 Indeed, the theme of the MPA in general is for each spouse to retain the individual character of each spouse’s assets and financial obligations. By way of example, the preamble to the MPA includes language specifically directed to the parties’ financial obligations and states in pertinent part: “**WHEREAS**, the parties further desire to provide that all obligations now outstanding and hereafter incurred by either of them shall be their respective sole obligations, as if they were unmarried persons[.]” The plain language of section III.B. furthers this purpose.

¶11 As we understand it, Pettit argues that section III.B. does not require her to reimburse Hein for his voluntary payments to her creditors. Pettit argues that the parties’ intent under section III.B. was to require reimbursement only “where the non-incurring spouse was *forced* to use individual property to pay the debts of the other.” (Emphasis added.) Stated differently, Pettit argues that there is no language in section III.B. that indicates that *voluntary* payments by one spouse from his or her individual assets to creditors of the other spouse are subject to reimbursement. She argues that requiring reimbursement for a voluntary payment is “contrary to the principal purpose of the MPA.”

¶12 In her reply brief, Pettit continues this argument by asserting that the definition of the word “obtain” in the reimbursement provision supports her reading of section III.B. Pettit relies on MERRIAM-WEBSTER’S NEW COLLEGIATE DICTIONARY 788 (1979), which defines “obtain” as “gaining or attaining, usually by planned action or effort.” Pettit goes on to argue that the second sentence in section III.B. “adds further clarity” to the reimbursement provision and that the “language used” clearly supports her argument when read “in the proper context.” We reject Pettit’s arguments.

¶13 Pettit’s attempt to draw a distinction between “voluntary” and “forced” payments finds no support in the section’s language. There is no language in section III.B. that limits the right to reimbursement to compelled payments. As for the definition of “obtain” in the reimbursement provision, Pettit cherry picks a definition that supports her argument, but does not give effect to the parties’ intentions. The reimbursement provision refers to payments made to creditors without distinguishing between voluntary or compelled payments. Pettit asks us to create a distinction that is contrary to section III.B.’s clear meaning. We will not do so.

¶14 Applying the only reasonable reading of section III.B., and specifically the reimbursement provision, we conclude that Pettit is obligated to reimburse Hein for the subject payments. It is undisputed that Hein voluntarily paid F&M \$100,000 on the note for Pettit’s Columbus home and \$11,500 for property taxes Pettit owed on the Milwaukee house. Hein testified that he and Pettit had an understanding that Pettit would reimburse Hein for these payments after she sold her house. The circuit court apparently credited and relied in part on this testimony in support of its finding that Hein did not intend to gift these payments to Pettit, which, as we indicated, Pettit does not challenge on appeal.¹

¹ Pettit argues that section III.D. of the MPA supports her argument that voluntary payments by either spouse of the other’s financial obligations is not subjected to the reimbursement provision in section III.B. Section III.D. authorizes either party to voluntarily pay or satisfy the other spouse’s obligations, with the caveat that such payments cannot be deemed as assuming responsibility for the balance of the other spouse’s obligations, and without waiving any other obligation under Article III. We see no language in section III.D. that informs how III.B. should be interpreted. We therefore address this argument no further.

CONCLUSION

¶15 In sum, we conclude that under the plain language of section III.B. of the MPA, Pettit is obligated to reimburse Hein \$111,500 for payments Hein made to satisfy Pettit's financial obligations to F&M and for Pettit's property taxes on her Milwaukee home. We therefore affirm.

By the Court.—Judgment affirmed.

This appeal will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

